

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

FILED
U.S. DISTRICT COURT
SAVANNAH, GA.

2013 JUL 19 PM 1

CLERK 
SO. DIST. OF GA.

CARGILL, INCORPORATED

Plaintiff,

vs.

M/T MALBEC, HER ENGINES,
TACKLE, etc., in rem,

Defendant.

C V 4 1 3 1 7 0

CIVIL ACTION NO. _____

VERIFIED COMPLAINT IN ADMIRALTY

NOW COMES, Plaintiff Cargill Incorporated (hereinafter referred to as "Cargill"), through undersigned counsel, and for its Verified Complaint against M/T MALBEC, her engines, tackle, etc., in rem, shows the Court as follows:

1.

This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure; Jurisdiction exists pursuant to 28 U.S.C § 1333.

2.

At all material times, Plaintiff Cargill was and still is a Delaware corporation and was the owner of and/or successor in title to a cargo of RBD palm oil which was imported by Plaintiff Cargill and shipped aboard the M/V MALBEC under a bill of lading issued on May 14, 2013 for carriage from Kuantan, Malaysia to Savannah, Georgia and signed by or on behalf of the Master, a duly authorized agent of the M/T MALBEC.

3.

At all material times, the M/T MALBEC was and is a vessel engaged in the common carriage of merchandise by water for hire between various foreign ports and the port of Savannah, Georgia and is now, or will be during the pendency of process hereunder within the district and within the jurisdiction of this Court.

4.

On May 14, 2013, there was delivered to the M/T MALBEC, a cargo (2,200.743 MT) of RBD palm oil, all in good order and condition, for carriage aboard the M/T MALBEC in consideration of an agreed freight and in accordance with the terms of a contract of carriage evidenced by a bill of lading, for carriage from Kuantan, Malaysia to Savannah, Georgia, which was signed and delivered to the shipper of said cargo by the duly authorized agent, representative and/or employee of the M/T MALBEC.

5.

Thereafter, the said cargo was loaded aboard the M/T MALBEC and the said vessel, having the cargo aboard, sailed from the port of Kuantan, Malaysia, and subsequently arrived at the port of Savannah, Georgia where it was discovered that the cargo was contaminated by a foreign substance from another of the vessel's tanks and would not be delivered in the same good order and condition as when shipped. The cargo was contaminated as a result of negligence, fault, lack of due diligence in failing to care for the cargo, breach of contract of carriage and unseaworthiness of the M/T MALBEC at the commencement of the voyage.

6.

The bill of lading and/or obligations of the parties are governed by the general maritime law

of the United States and/or Carriage of Goods by Sea Act, 46 U.S.C. § 30701, *et.seq.*, and/or other relevant convention statute.

7.

Prior to and at the time of the arrival of the M/T MALBEC at Savannah, Georgia and the delivery of said consignment, Cargill became the owner of said consignment and brings this action on its behalf and for the interest of all parties who may be or may become interested in said shipment as their respective interests may ultimately appear.

8.

By reason of the premises, Cargill has sustained losses in the amount of \$1,854,831.00, to be fully proven at trial.

9.

By reason of the premises, Cargill has a maritime lien on the M/T MALBEC.

10.

All conditions to Cargill recovering under the bills of lading, contract of affreightment and/or general maritime law have occurred or have been performed by Cargill and/or its predecessors in title.

11.

All and singular, the matters alleged are true and correct. All other provisions in Cargill's verified complaint remain as plead.

WHEREFORE Plaintiff Cargill prays:

(A) That process in due form of law according to the practice of this Court in causes of admiralty and maritime claims, issue against said vessel, her engines, etc., that the vessel be arrested

and that all persons having or claiming any interest therein be cited to appear and answer under oath, all and singular the matters aforesaid, and that this Court pronounce judgment in favor of plaintiff for its damages as aforesaid, with interest, costs and disbursements, and that the M/T MALBEC, HER ENGINES, TACKLE, etc., in rem, may be condemned and sold to pay the same; and

(B) That an Interlocutory Judgment be entered against the vessel in favor of the Plaintiff and that the M/T MALBEC be condemned and sold and that the proceeds of the sale be applied to payment due to Plaintiff for sums due it.

(C) That final judgment against Defendant be entered in favor of the Plaintiff for the amount due Plaintiff, with pre-judgment interest, post-judgment interest and with costs; and

(D) That Cargill may have such other and further relief as the court and justice may deem just and appropriate under the circumstances of the cause.

Respectfully submitted this 12th day of July, 2013.

BOUHAN FALLIGANT LLP


EDWIN D. ROBB

Georgia Bar No. 607900

TODD M. BAIAD

Georgia Bar No. 031605

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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION**

CARGILL, INCORPORATED)	
)	
Plaintiff,)	
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vs.)	CIVIL ACTION NO. _____
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M/T MALBEC, HER ENGINES,)	
TACKLE, etc., <u>in rem</u>,)	
)	
Defendant.)	

VERIFICATION

**STATE OF GEORGIA
COUNTY OF CHATHAM**

EDWIN D. ROBB, being duly sworn, deposes and says:

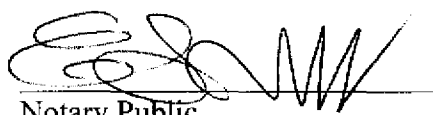
1. I am an attorney admitted to practice before this Honorable Court, and I am a member in the firm of Bouhan + Falligant, LLP, attorneys for the Plaintiff in this action. I make this affidavit pursuant to Supplemental Rules C and E for Certain Admiralty and Maritime Claims, of the Federal Rules of Civil Procedure in support of the Plaintiff's prayer for the issuance of a process of Maritime Arrest.

2. Plaintiff Cargill Incorporated is a foreign corporation, not a resident of Georgia. Therefore, based on information provided by Plaintiff Cargill, Inc., counsel Edwin D. Robb verifies that the information contained in the Complaint is true and correct.

3. The reason this verification is made by deponent and not by plaintiff is that plaintiff is a corporation or other legal entity, no officer of which is within this district.


EDWIN D. ROBB

Sworn to before me this 10 of July, 2013.


Notary Public
ELAINE S. NELSON
Notary Public, Chatham County GA
My Commission Expires April 30, 2016